



**SUMMARY OF AN ORDINANCE TO BE ADOPTED  
BY THE NEWARK CITY COUNCIL**

**NOTICE IS HEREBY GIVEN** that the City Council of the City of Newark, at its City Council meeting of Thursday, July 25, 2024, at or near 7:00 p.m. in the Council Chambers, David W. Smith City Hall, 37101 Newark Boulevard, Newark, California, will consider the second reading and adoption of the following ordinance:

**Amending Newark Municipal Code Chapter 2.28, "Personnel System"**

Chapter 2.28 establishes procedures dealing with personnel matters and systems. The following is a summary of the substantive changes to Chapter 2.28:

Provide that personnel-related tasks are functions of the Personnel Officer, appointed by the City Manager; Provide that all Department Directors are exempt/ "at- will" and removes City Treasurer from list of exempt employees as this position is no longer active; Revise language regarding part-time employees, examination process, appointment process, and probation to align with Personnel Rules & Regulations and current practice; Remove language which is part of the various Memoranda of Understanding (MOU) and subject to the authority of the MOU; and Remove language that is part of the Personnel Rules & Regulations and/or part of other City administrative regulations.

The proposed ordinance is available for public inspection on the City website at <https://www.newark.org/departments/city-manager-s-office/agendas-minutes>, or in the Office of the City Clerk, David W. Smith City Hall, 37101 Newark Boulevard, Newark, California, during regular business hours on weekdays. All interested parties may attend the meeting and be heard.

SHEILA HARRINGTON, City Clerk

Publication: The Tri City Voice, July 9, 2024



## **ORDINANCE NO.**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK AMENDING NEWARK MUNICIPAL CODE CHAPTER 2.28, "PERSONNEL SYSTEM"**

**WHEREAS**, the City Council of the City of Newark adopted an ordinance establishing Newark Municipal Code ("NMC") Chapter 2.28 in 1963 to provide for a fair and equitable system of personnel management; and

**WHEREAS**, staff completed a review of NMC Chapter 2.28 regarding potential revisions to align NMC Chapter 2.28 with current policies and procedures, streamline the code, and remove redundancies with other administrative documents; and

**WHEREAS**, the City Council desires to amend NMC Chapter 2.28 to provide certain substantive changes including clarifying the role of the Personnel Officer, providing that Department Heads are considered "at-will" employees, revising language regarding part-time employees, the examination process for hiring, the appointment process for employees, and removing redundancies with other administrative documents such as the Personnel Rules and Regulations, Administrative Regulations, and Memoranda of Understanding.

### **THE CITY COUNCIL OF THE CITY OF NEWARK DOES ORDAIN AS FOLLOWS:**

#### **Section 1. Recitals.**

The above recitals are true and correct and make a part of this Ordinance.

#### **Section 2. Amendments.**

Newark Municipal Code Chapter 2.28 is amended as shown with revisions in Exhibit A, which is attached hereto and incorporated herein by reference.

#### **Section 3. Severability.**

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Newark hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

#### **Section 4. CEQA.**

Approval of this Ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions that do not authorize any new activity, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

**Section 5. Publication and effective date.**

Within fifteen (15) days from and after adoption, this Ordinance shall be published once in a newspaper of general circulation printed and published in Alameda County and circulated in the City of Newark, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

## **Chapter 2.28 PERSONNEL SYSTEM**

### **Sections:**

#### **2.28.010 Adopted.**

In order to establish an equitable and uniform procedure for dealing with personnel matters; to attract to municipal service the best and most competent persons available; to assure that appointments and promotions of employees will be based on merit and fitness as determined by competitive test; to provide a reasonable degree of security for qualified employees; to set standards for employee conduct; and to provide for discipline and dismissal of employees for cause, the personnel system in this chapter is adopted.

(Ord. 77 § 1, 1963)

#### **2.28.020 Personnel officer.**

~~The city manager shall be ex officio personnel officer. The city manager may in writing delegate any of the powers and duties conferred upon him as personnel officer under this chapter to any other officer or employee of the city, or may contract for the performance of such duties. The personnel officer shall be selected and appointed by the City Manager.~~ The city manager Personnel Officer shall:

- A. Administer all the provisions of this chapter and of the personnel rules not specifically reserved to the council;
- B. Prepare and recommend to the council revisions and amendments to the personnel rules. The city attorney shall approve the legality of such revisions and amendments prior to their submission to the council;
- C. Prepare a position classification plan, including class specifications, and revisions of the plan. The plan, and any revisions thereof, shall become effective upon approval by the council, the City Manager, or the personnel officer, as required by the Personnel Rules and Regulations;
- D. Prepare a plan of compensation, and revisions thereof, covering all classifications in the competitive service. The plan, and any revisions thereof, shall become effective upon approval by the council;
- E. Recruit applicants, conduct examinations, and establish employment lists, ~~and make appointments~~ for positions in the competitive service. The City Manager shall authorize appointments for positions in the competitive service.

(Ord. 77.10 § 2, 1979; Ord. 77 § 2, 1963)

#### **2.28.030 Competitive and exempt service.**

- A. The exempt service shall include members of the city council; members of appointive boards, commissions and committees; the city manager, ~~the city treasurer,~~ the city attorney, and all department heads; technical consultants engaged under contract to provide expert, professional, technical or any other services; volunteer personnel; temporary, ~~part-time, and seasonal~~ employees; emergency employees hired to meet the immediate requirements of an emergency condition, such as extraordinary fire, flood, or earthquake which threatens life or property; and persons hired by the city under public service employment programs. ~~such as, but not limited to the Comprehensive Employment and Training Act (CETA).~~



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- B. No provisions of this chapter or resolutions pursuant thereto shall apply to any employee or classification of employee in the exempt service unless the employee is specifically included in the provisions.
- C. The ~~personnel officer~~ City Manager shall appoint, ~~discipline,~~ or dismiss persons in the temporary, ~~part-time, seasonal,~~ emergency and public service employment exempt service categories as necessary. Department heads shall discipline persons in the temporary, emergency, and public service employment exempt service categories as necessary. Such action shall be based upon the principals of merit and fitness but need not be made in accord with the formal provisions of this chapter or the rules adopted pursuant to this chapter. Further, the personnel officer shall enforce any other provisions of this chapter or the personnel regulations applicable to the categories of exempt positions.
- D. The competitive service shall include all employees not in the exempt service. All provisions of this chapter and resolutions thereto shall apply to all employees in the competitive service unless the employee or classification of employee is specifically exempted from the provisions.

(Ord. 77.10 § 3 (part), 4, 1979; Ord. 77 § 3, 1963)

## **2.28.040 Permanent part-time employees.**

~~There is created a permanent part time classification for employees who work in positions in the city at least thirty hours per week. Such employees in this classification are to be hired at the discretion of the city department head, subject to the approval of the personnel officer. Employees in this classification are to be granted vacation time on a pro rata basis and uniform allowances on a pro rata basis, where applicable. The prorations mentioned in this section shall be determined based on the number of hours per week worked. Employees in the permanent part time classification shall be subject to the same salary steps as those of regular employees on a pro rata basis. Employees in this classification are to be subject to all personnel rules not inconsistent with the provisions of this chapter, except that they shall be entitled only to the fringe benefits provided in this section, which are: pro rata vacation pay and pro rata uniform allowances, where applicable.~~

~~{Ord. 77.10 § 3 (part), 1979; Ord. 77.4 § 1, 1970; Ord. 77 § 4, 1963}~~

Reserved.

## **2.28.050 Rules—Adoption and amendment.**

Personnel rules, prepared by the personnel officer subject to this chapter and to revision by the council, shall be adopted, and may be amended from time to time, by resolution of the council. The rules shall establish procedures and regulations governing the following phases of the personnel system:

- A. Preparation, installation, revision, and maintenance of a position classification plan covering all positions in the competitive service, including employment standards and qualifications for each class;
- B. Preparations, revision, and administration of a plan of compensation directly correlated with the position classification plan, providing a rate or range of pay for each class;
- C. ~~Public~~ Announcement of all examinations and the acceptance of applications for employment;
- D. Preparation and conduct of tests and the establishment and use of resulting employment lists containing names of persons eligible for appointment;
- E. Appointment of persons from employment lists, and the making of temporary and emergency appointments;
- F. Evaluation of employees;

- G. Transfer, promotion, demotion, reclassification, and reinstatement of employees in the competitive service;
- H. Separation of employees from ~~the~~ city service through layoff, suspension, resignation, retirement, and dismissal;
- I. Establishment of hours of work, attendance and leave regulations, working conditions and the development of employee morale and training;
- J. Content, maintenance and use of personnel records and forms;
- K. Establishment of administrative regulations and regulations issued by department heads implementing this chapter or personnel regulations adopted by the city council.

(Ord. 77.10 §§ 3 (part), 5, 6, 1979; Ord. 77 § 5, 1963)

## 2.28.060 Appointments.

- A. Appointments to vacant positions in the competitive service shall be made in accordance with the personnel rules. Appointments and promotions shall be based on merit and fitness to be ascertained so far as practicable by competitive examinations. ~~Examinations shall be used and conducted to aid in the selection of qualified employees, and shall consist of such recognized selection techniques as achievement and aptitude tests, other written tests, personal interviews, performance tests, evaluation of daily work performance, work sampler, evaluation of references, psychiatric tests, or any other technique or method that might reasonably be expected to test merit and fitness, or any other combination of these, which will, in the opinion of the personnel officer, test fairly the qualifications of candidates. Physical and medical tests may be given as a part of any examination.~~
- B. In any examination the personnel officer may include, in addition to competitive tests, a qualifying test or tests, and set minimum standards therefor.
- C. Appointments and promotions shall be made by the city manager from among the persons on the appropriate eligible or promotional lists ~~after the city manager confers with the department head involved.~~
- D. In the absence of appropriate employment lists, a temporary appointment may be made by the city manager of a person meeting the ~~minimum~~ training and experience qualifications for the position. An employment list shall be established within six months for any permanent position filled by temporary appointment. ~~The council may, by a four-fifths vote, extend the period of any temporary appointment for not more than thirty days, by any one action.~~
- E. ~~No special credit shall be allowed in meeting any qualification or in the giving of any test or the establishment of any employment or promotional lists, for service rendered under a temporary appointment.~~
- F. ~~During the period of suspension of any employee or pending final action on proceedings to review suspension, demotion or dismissal of an employee, such vacancy may be filled by the city manager, subject to the provisions of this chapter and the personnel rules.~~

(Ord. 77.10 § 3 (part), 1979; Ord. 77 § 6, 1963)

## 2.28.070 ~~Probationary period.~~ Reserved

- A. ~~All appointments in the competitive service, including promotional appointments, shall be made for a probationary period of not less than six months, nor more than eighteen months, as specified in the~~



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~~classification plan. During the probationary period, the employee may be rejected at any time without right of appeal or hearing.~~

- ~~B. An employee rejected during the probationary period from a position to which he has been promoted shall be reinstated to the position from which he was promoted, unless he is dismissed from the city service as provided in this chapter and the rules.~~

~~(Ord. 207 § 1, 1985; Ord. 77.10 § 3 (part), 1979; Ord. 77 § 7, 1963)~~

## **2.28.080 Status of present employees.**

- A. Any person holding a position included in the competitive service who, on the effective date of the ordinance codified in this chapter, has served continuously in such position, or in some other position in the competitive service, for a period equal to the probationary period prescribed in the rules for ~~his~~their class, or the ending date of a probationary period extension, shall assume regular status in the competitive service in the position held on such effective date without qualifying test, and shall thereafter be subject in all respects to the provisions of this chapter and the personnel rules.
- B. Any other persons holding positions in the competitive service shall be regarded as probationers who are serving out the balance of their probationary periods as prescribed in the rules before obtaining regular status. The probationary period shall be computed from the date of appointment or employment, including only continuous service.

(Ord. 77.10 § 3 (part), 1979; Ord. 77 § 8, 1963)

## **2.28.090 ~~Suspension.~~**

~~Any person holding a position or employment in the competitive service shall be subject to disciplinary suspension without pay.~~

~~(Ord. 77.10 § 3 (part), 1979; Ord. 77 § 9, 1963) Reserved.~~

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## 2.28.100 ~~General conduct of employees.~~

~~Each of the following constitutes cause for discipline of an employee, or person whose name appears on any employment list:~~

- ~~A. Fraud in securing appointment;~~
- ~~B. Incompetency;~~
- ~~C. Inefficiency;~~
- ~~D. Inexcusable neglect of duty;~~
- ~~E. Insubordination;~~
- ~~F. Dishonesty;~~
- ~~G. Drunkenness on duty;~~
- ~~H. Addiction to the use of illegal narcotics or illegal habit forming drugs;~~
- ~~I. Inexcusable absence without leave;~~
- ~~J. Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section;~~
- ~~K. Discourteous treatment of the public or other employees;~~
- ~~L. Wilful disobedience;~~
- ~~M. Misuse of city property;~~
- ~~N. Violation of this chapter or any rule adopted thereto;~~
- ~~O. A city officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his/her duties as a city officer or employee or with the duties, functions or responsibilities of the department of the city government in which he/she is employed;~~
- ~~P. Refusal to take and subscribe to any oath or affirmation which is required by law in connection with his/her employment;~~



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~~Q. Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the city or his/her employment.~~

~~(Ord. 77-10 §§ 3 (part), 7, 1979; Ord. 77 § 10, 1963) Reserved.~~

## **2.28.110 Right of appeal.**

- A. Employees in the competitive service shall have the right of appeal on the interpretation or application of this chapter or the rules adopted pursuant to this chapter. The city recognizes that it is in the city's interest as well as that of the employee that questions concerning the application of or interpretation of this chapter and the rules adopted pursuant thereto be resolved as expeditiously as possible affording the employee due process.
- B. For purposes of this section, all notices required by this chapter shall be effective when personally served supported by a declaration under penalty of perjury of the fact of personal service stating the time, place and person served. Notice may also be served by addressing said notice to the employee at his home address as shown in the personnel office, postage prepaid, mailed by certified mail return receipt requested. Notice sent by certified mail shall be considered served upon deposit in the U.S. mail postage prepaid. A written appeal shall contain a complete statement of the appeal, the alleged facts upon which the complaint is based, the reasons for the appeal, the remedy requested, and the sections of this chapter or the personnel rules adopted by the city council hereto which have been violated. The appeal shall be signed and dated by the employee.
- C. Hearings on appeals and actual filing of appeals may be processed during normally scheduled working hours. All other activities related to the employee's preparation and processing of the appeal shall be done outside of scheduled working hours. No employee or employee organization representative shall be entitled to any additional compensation or premium pay for any time spent in preparing or processing appeals. No appeals will be processed during periods of overtime.
- D. The employee shall pay for the time and expenses of its representatives and witnesses through all stages of the appeals procedure. Witnesses who are city employees and who are on duty at the time of a scheduled appearance shall be released from duty without loss of compensation for the time required to testify. One spokesperson from the employee organization shall be permitted to be present without loss of compensation during hearings on appeals if that spokesperson is the sole representative of the employee in that specific proceeding.
- E. Time limits set forth in this section for processing the appeals procedure are of the essence to this procedure and are to be strictly complied with. Time limits may be extended only by written mutual agreement of the employee and supervisor conducting a hearing.
- F. Any appeal not filed or appealed by the employee within the time limits specified shall be considered settled on the basis of the last disposition given. In the event the appeal is not answered by the city within the time limits set forth in this section, the employee may take the appeal to the next higher step in the appeal procedure within the time limits provided.
- G. No resolution of any appeal shall be contrary to the provisions of this chapter or the personnel rules adopted pursuant to this chapter.
- H. Copies of the resolution of all appeals shall be filed in the employee's city personnel file.
- I. Appeals shall be processed in the following manner:
  - 1. Within ten calendar days of the occurrence of the matter on which an appeal is based, the employee shall discuss his/her appeal in a meeting with his/her immediate supervisor.

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2. If, after such discussion, the employee does not believe the problem has been satisfactorily resolved, he/she shall have the right, within ten calendar days of the occurrence of the matter to file a formal appeal of the personnel action in writing. Said appeal shall be filed with the employee's immediate supervisor.
  3. Within ten calendar days of receipt of the notice of formal appeal, the immediate supervisor shall provide his/her decision in writing to the employee.
  4. Within ten calendar days of his/her receipt of the decision from his/her immediate supervisor, the employee may appeal that decision by presenting the formal written appeal to the appropriate department head.
  5. Within ten calendar days of receipt of the formal appeal, the department head shall provide a written decision to the employee.
  6. If the employee does not feel that the appeal has been resolved, the employee may, within ten calendar days of receipt of the department head's decision, present his/her formal appeal in writing to the personnel officer. The personnel officer or his/her designated representative shall make a thorough review of the appeal, meet with the parties involved and provide a written decision to the employee within ten calendar days of receipt of the appeal.
  7. Within ten calendar days of receipt of the decision of the personnel officer, the employee may demand in writing to the personnel officer that the formal appeal be submitted to an independent fact-finder from a list of three qualified fact-finders submitted to the city by the American Arbitration Association.
    - a. The personnel officer and the employee shall alternately strike names from the list so furnished and the last name remaining shall be designated as the fact-finder.
    - b. The city and the employee shall split evenly payment of the fees and expenses of the fact-finder as well as the cost of making the record of the fact-finder except as otherwise provided by state law.
    - c. The rules of conduct of proceedings shall be according to those procedures for expedited fact-finding utilized by the American Arbitration Association.
    - d. The city and the employee both hold the right to be represented by an attorney or a representative of the employee's union or association.
    - e. If either of the parties does not accept the decision of the fact-finder, that party, within ten calendar days after receipt of the decision of the fact-finder, shall file with the city clerk a notice of intention to appeal to the city council. Within thirty calendar days after the receipt of the decision of the fact-finder that party shall file with the city clerk for submission to the city council for final decision the transcript of evidence and conclusions of the fact-finder. Failure to comply with either the ten-day or the thirty-day time periods shall be deemed to be an acceptance of and an agreement with the fact-finder's decision and shall constitute an abandonment and waiver of the right to appeal to the city council. The city council shall decide the matter based upon the record presented to it. The decision of the city council shall be final.

(Ord. 267 § 1, 1990; Ord. 77.10 §§ 3 (part), 8, 1979; Ord. 77 § 11, 1963)

## **2.28.120 Abolition of position.**

Whenever in the judgment of the council it becomes necessary in the interest of economy or because the necessity for the position ~~or employment involved~~ no longer exists, the council may abolish any position or employment in the competitive service and layoff, demote or transfer an employee holding such position or

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employment without filing written charges and without the right of appeal. Personnel reduction procedures ~~shall be as established by city council resolution~~ are provided in the Personnel Rules and Regulations.

(Ord. 77.10 § 3 (part), 1979; Ord. 77.9 § 2, 1978; Ord. 77 § 12, 1963)

### **2.28.130 Political activity.**

- A. No member of the competitive or exempt service shall, directly or indirectly, solicit or receive political funds or contributions, knowingly, from other members of the competitive or exempt service nor from persons on the employment lists of the city.
- B. Every member of the competitive or exempt service shall prohibit the entry, into any place under ~~his~~ their control, occupied and used for the governmental purposes of the city, of any person, for the purpose of therein making, or giving notice of any political assessment, subscription, or contribution.
- C. A person shall not enter or remain in any such place described in subsection B of this section for the purpose of therein making, demanding, or giving notice of any political assessment, subscription, or contribution.
- D. Subsections B and C of this section shall not apply to any auditorium or other place used for the conduct of public or political rallies or similar events, nor to any park, street, public land or other place not being used for the governmental purposes of the city.
- E. No one who holds, or who is seeking election or appointment to, any position in the competitive or exempt service shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority or influence, whether then possessed or merely anticipated, to confer upon or secure for any person, or to aid or obstruct any person in securing, or to prevent any person from securing, any position, nomination, confirmation, promotion, change in compensation or position, within the city, upon consideration or condition that the vote of political influence or action of such person or another shall be given or used in behalf of, or withheld from any candidate, officer or party, or upon any other corrupt condition or consideration.
- F. No member of the competitive or exempt service shall participate in political activities of any kind while he is in uniform.

(Ord. 77.10 § 3 (part), 1979; Ord. 77.5 § 1, 1972; Ord. 77.1 § 2, 1964; Ord. 77 § 13, 1963)

### **2.28.140 Discrimination.**

No person in the competitive service, or seeking admission thereto, shall be employed, promoted, demoted or discharged or in any way favored or discriminated against ~~– in violation of applicable law.~~

(Ord. 405 § 1, 2004; Ord. 77.10 § 3 (part), 1979; Ord. 77.1 § 3 (part), 1964; Ord. 77 § 14, 1963)

### **2.28.150 Right to contract for special service.**

The personnel officer may contract with any qualified person or agency for the performance of such technical service as may be desired in the establishment or operation of the personnel system.

(Ord. 77.10 § 3 (part), 1979; Ord. 77.1 § 3 (part), 1964; Ord. 77 § 15, 1963)



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### **2.28.160 Holidays.**

- ~~A. Employees, except emergency service personnel in the police and fire departments, shall observe the following legal holidays: New Year's Day; Lincoln's Birthday; Washington's Birthday; Memorial Day; Independence Day; Admission Day; Labor Day; Armistice Day; Thanksgiving Day, the day following Thanksgiving Day; the last workday before Christmas, and Christmas Day. When a holiday falls on Sunday, the following Monday shall be observed. When a holiday falls on Saturday, the preceding Friday shall be observed.~~
- ~~B. Emergency service personnel in the police and fire departments shall receive compensation in lieu of holidays as provided in the compensation plan.~~

~~{Ord. 77.10 § 3 (part), 9, 1979; Ord. 77.1 § 3 (part), 1964; Ord. 77 § 16, 1963}~~ Reserved.

### **2.28.170 Violation—Penalty.**

~~Any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon a conviction thereof shall be punishable by a fine of not more than five hundred dollars, or by imprisonment for a period of not more than six months, or by both such fine and imprisonment.~~

~~{Ord. 77.10 § 3 (part), 1979; Ord. 77.1 § 3 (part), 1964; Ord. 77 § 16, 1963}~~ Reserved.